Abdul Wahab bin Jam Jam v Abdul Wahab bin Abdullah & Anor

HIGH COURT (KUANTAN) — CIVIL APPEAL NO 12–66 OF 2002
MOHAMED APANDI ALI J
14 DECEMBER 2007

Tort — Damages — Road accident — Intra-abdominal injury — Whether award of RM60,000 excessive

Tort — Damages — Road accident — Liability — Conflicting versions as to how the accident occurred — Whether consistent with the independent evidence — Whether story supported by the accident scene and its surrounding

Tort — Damages — Road accident — Liability — Contributory negligence — Whether not having a valid driving license amount to negligence

An accident occurred between a motorcycle driven by the second respondent and a motor van driven by the appellant whereby the motorcycle hit the left rear of the motor van. As a result of the accident, the second respondent suffered Intra-abdominal injury and Compound Grade I fracture of right radius and right ulna. There were conflicting versions as to how the accident occurred. The session court judge held the appellant to be 100% liable for the accident and also ordered, inter alia, damages of RM60,000 for the respondent's Intra-abdominal injury. The appellant appealed to the High Court against the decision over his 100% liability and also over the quantum of damages of the aforesaid RM60,000.

Held, allowing the appeal in part:

(1) Analyzing the police report and the independent evidence by Sarjan Shamsuddin and comparing it with the testimony of the second respondent and the appellant in court, the police report (D6) by the appellant was more consistent with his story in court. This is so because D6 was made on the day of accident itself whereas the second respondent's police report (D3) was made about two months after the accident (see para 27).

(2) It has also been proven that there were no brake marks on the road of the accident scene to support the story of sudden braking by the appellant as alleged by the respondents. Furthermore, looking from the surrounding of the accident scene from the rough plan i.e. the road is of a straight lane and the fact that both vehicles come from the same direction and head to the same direction, there was no possible reason for the appellant to brake suddenly to stop the motor van (see para 28).

(3) It can also be seen from the independent evidence adduced that the second respondent is not a competent driver to ride the said motorcycle as she does not have a valid driving licence. Although not having a valid driving licence in itself does not mean that the driver is negligent, nevertheless, in this case, the second respondent herself, on her own accord had admitted guilt for negligence driving when she pleaded guilty when charged in court under rule 10 of the said offence (see para 29).

(4) The quantum of RM60,000 as awarded by the trial judge was adequate and in the circumstances was not excessive as per the injuries suffered. The quantum is based on 100% liability (see para 35).

[Bahasa Malaysia summary

Satu kemalangan telah berlaku antara sebuah motosikal yang ditunggang oleh responden kedua dan sebuah van yang dipandu oleh perayu dimana motosikal tersebut telah melanggar bahagian tepi kiri van. Berikutan kemalangan tersebut, responden kedua mengalami kecederaan intra-abdominal dan patah Compound Grade I radius dan ulna kanan. Terdapat versi berlainan terhadap bagaimana kemalangan itu berlaku. Hakim mahkamah sesyen memutuskan perayu adalah bertanggungjawab 100% kepada kemalangan tersebut dan juga memerintahkan, antara lain, gantirugi sebanyak RM60,000 kepada kecederaan intra-abdominal responden. Perayu merayu kepada Mahkamah Tinggi terhadap keputusan liabiliti 100% dan juga kepada kuantum gantirugi RM60,000 tesebut.

Diputuskan, membenarkan sebahagian rayuan:

(1) Menganalisa laporan polis dan keterangan bebas oleh Sarjan Shamsuddin dan membandingkannya dengan keterangan responden kedua dan perayu dalam mahkamah, laporan polis (D6) oleh perayu adalah lebih konsisten dengan ceritanya di dalam mahkamah. Ini adalah kerana D6 telah dibuat pada hari kemalangan tersebut sedangkan laporan polis responden kedua (D3) dibuat lebih kurang dua bulan selepas kemalangan (lihat perenggan 27).

(2) Ia juga telah dapat dibuktikan bahawa tidak ada tanda-tanda brek di atas jalan tempat kemalangan bagi menyokong cerita bahawa brek mengejut oleh perayu sebagaimana didakwa oleh responden-responden. Tambahan pula, melihat kepada persekitaran tempat kemalangan daripada rajah kasar yakni jalan adalah merupakan laluan yang lurus dan fakta bahawa kedua-dua kenderaan datang dari arah yang sama dan menuju kearah yang sama, tidak ada sebab yang munasabah bagi perayu membrek secara mengejut bagi memberhentikan vannya (lihat perenggan 28).

(3) Ia juga boleh dilihat daripada keterangan bebas yang dikemukakan bahawa responden kedua bukanlah pemandu yang cekap untuk menunggang motosikal kerana beliau tidak mempunyai lesen memandu. Walaupun tidak mempunyai lesen memandu secara sendirinya tidak bermaksud bahawa pemandu adalah cuai, namun, dalam kes ini, responden kedua sendiri, diatas kemampuannya telah mengaku salah untuk kecuaian memandu apabila beliau mengaku salah terhadap tuduhan dalam mahkamah di bawah Kaedah 10 untuk kesalahan tersebut (lihat perenggan 29).

(4) Kuantum sebanyak RM60,000 sebagaimana diawardkan oleh hakim bicara adalah mencukupi dan dalam keadaan ini tidaklah keterlaluan seperti kecederaan yang dialami. Kuantum itu berdasarkan kepada liabilti 100% (lihat perenggan 35).]

Notes

For cases on damages for road accident, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 215–217.

Cases referred to

Abdul Mokthi bin Hj Ahmad v Idris bin Ibrahim [1977] 2 MLJ 85 (refd)
Chai Kah Sim v Ishak bin Saad [1986] 2 MLJ 132 (refd)
Chu Kim Sing & Anor v Abdul Razak bin Amin [1999] 6 MLJ 422 (refd)
H West & Son, Ltd v Shephard [1964] AC 326 (refd)
Jag Singh v Toong Fong Omnibus Co Ltd [1964] MLJ 463 (refd)
Kamaruddin Mohd Nor & Anor v Soon Soo Moe & Anor [1998] 4 CLJ Supp 301 (refd)
Lai Yew Seong v Chan Kim Sang [1987] 1 MLJ 403 (refd)
Lee Ewe Teik v Ariffin bin Hussain [1990] 2 CLJ 191 (refd)
Liau Mui Mui v Dr R Venkat Krishnan [1999] 1 CLJ 207 (refd)
Mahalingam a/l Varathan v Chan Chee Tuck [1987] 2 MLJ 20 (refd)
Miskinah bte Jaya & Ors v Mohamed bin Salleh & Anor [1984] 1 MLJ 187 (refd)
Nicholas Arthur Nock v Mohamed bin Sulieman [1976] 1 MLJ 100 (refd)
Phuah Jee Suan v Nila Vasu Pillai [1973] 1 MLJ 186 (refd)
Puspawangi bte Hassan v Chou Hau [1993] Mallal's Digest para 734 (refd)

Tabarani bin Mohd Arshad & Anor v Chan Tenn Yeu [1999] 2 AMR (refd)

(KH Lee & Sim) for the respondent.
(Selva, Velu & Co) for the appellant.

Mohamed Apandi Ali J:

[1] This is an appeal against the decision of the session court judge that held the appellant to be 100% liable for an accident between the motor van driven by the appellant and the motorcycle ridden by the second respondent. The session court judge had also made the following order for damages and cost:

	RM
Special Damages	1,220
General Damages	
■ Ileum Perforation & Sigmold-colon Perforation (Intra-abdominal injury)	60,000
■ Compound Grade I Fracture of Right Radius	18,000
	79,220
Costs	
■ Fees of filing of Summons	100
■ Fees for filing the Bundle of Pleadings and Bundle of Documents	8
■ Costs of preparing 3 sets of Bundle of Documents of 21 sheets each in total of 63 sheets photocopy charges of RM0.30 each	18.90
■ Costs of preparing 3 sets of Bundle of Pleadings of 13 sheets each in total of 39 sheets photocopy charges of RM0.30 each	11.70
■ Fees to file sepeona to Sarjan Shamsuddin Bin Ali	8
■ Witness allowance to Sarjan Shamsuddin Bin Ali from IPD Traffic Rompin	150
■ Costs for lawyer's attendance to court for trial on 23 March 2001, 9 February 2002 & 29 August 2002 at the rate of RM25 per day	75
■ Costs of prosecution at RM79,220	1,175
■ Costs of Counsel at RM79,220	4,650
■ Costs of Judgment	100
	6.296.60

[2] The session court judge had also ordered the appellant to pay interest at the rate of 4% per annum over the special damages from the date of the accident to the date of judgment and 8% per annum thereafter until full payment. And also interest at the rate of 8% per annum over the general damages from the date the summons was served until full payment.

[3] The appellant is now appealing against the decision over his 100% liability and also over the quantum of damages of RM60,000 awarded by the session court judge for the Ileum Perforation & Sigmold-colon Perforation (Intra-abdominal injury) suffered by the second respondent.

BRIEF FACTS OF THE CASE

[4] The accident that was the crux of this Appeal occurred on the 17 October 1998 at about 7.30am at Jalan Belakang Felda Keratong, Bandar Tun Razak, Rompin between a motorcycle bearing registration number JCX 5119 ridden by the second respondent and a motor van bearing registration number JEL 1869 driven by the appellant, whereby the said motorcycle hit the left rear of the said motor van.

[5] As a result of the accident, the second respondent had suffered the following injuries:

(1) Intra-abdominal injury (Ileum perforation and sigmoid-colon perforation); and

(2) Compound Grade I Fracture of Right Radius and Right Ulna.

[6] She was admitted to the hospital twice. The first time was right after the accident on 17 October 1998. She was discharged on 16 November 1998. However, she was again admitted to the hospital on 6 January 1999 and was finally discharged on 17 January 1999 (refer medical report at p 181 of the appeal record).

[7] The appellant however suffered no injuries.

[8] The second respondent does not own a valid driving licence and was charged in court for negligence driving under rule 10 whereby she pleaded guilty and was fined RM150 (refer pp 50–51 of the appeal record).

[9] Both parties gave conflicting versions as to how the accident occurred. It was alleged by the second respondent that the accident occurred when the

appellant suddenly overtook the second respondent and then abruptly stopped in front of her causing her to stop on time and thus hit the back of the motor van.

[10] The appellant's version on the other hand was that he was driving along when suddenly he heard a loud bang from the back of his motor van and when he stopped to check, he saw the motorcycle ridden by the second respondent with her lying on the road. He denied that he had overtaken the motor cycle and also that he had abruptly stopped his motor van.

THE APPELLANT'S CASE

[11] It was submitted by the appellant that the trial judge erred in fact by taking the respondents' version to be true and thus holding the appellant 100% liable for the occurrence of the accident.

[12] The appellant submitted that the following evidence was given during trial:

(1) that there were no brake marks at the accident scene;

(2) based on the damages to both vehicles, the damages to the motor van were solely at its rear (refer p 50 of the appeal record);

(3) that the second respondent does not own any valid driving licence; and

(4) that the second respondent was charged in court for negligence driving where she pleaded guilty and was fined RM150.

[13] The appellant submitted that based on the above evidence, the evidence by the second respondent that it was the sudden braking by the appellant that had caused the accident is clearly unsupported by any evidence and this fact cannot be accepted even on the balance of probabilities.

[14] The appellant cited the following cases in support of its submission:

(1) *Abdul Mokthi bin Hj Ahmad v Idris bin Ibrahim* [1977] 2 MLJ 85 (p 77 of the appeal record).

(2) *Lai Yew Seong v Chan Kim Sang* [1987] 1 MLJ 403 (p 79 of the appeal record).

(3) *Tabarani bin Mohd Arshad & Anor v Chan Tenn Yeu* [1999] 2 AMR (pp 71 & 84 of the appeal record).

(4) *Lee Ewe Teik v. Ariffin bin Hussain* [1990] 2 CLJ 191 (pp 72 & 102 appeal record).

[15] On the quantum, the appellant submitted that the amount of RM60,000 awarded by the trial judge for Ileum perforation and sigmoid-colon perforation is excessive as there were no medical report given to prove residual disabilities and there was also no evidence to show permanent disabilities.

THE RESPONDENTS' CASE

[16] The respondents submitted that the cause of the accident was the sudden braking by the appellant and thus the appellant is 100% liable for the accident. The respondents cited the following cases in support:

(1) *Kamaruddin Mohd Nor & Anor v Soon Soo Moe & Anor* [1998] 4 CLJ Supp 301 (pp 154–164 of the appeal record).

(2) *Miskinah bte Jaya & Ors v Mohamed bin Salleh & Anor* [1984] 1 MLJ 187 (pp 122–127 of the appeal record).

(3) *Nicholas Arthur Nock v Mohamed Bin Sulieman* [1976] 1 MLJ 100 (pp 133–139 of the appeal record).

[17] The respondents further submitted that:

(1) Based on the injuries suffered by the second respondent and the damages to the motorcycle and the motor van, the speed of the vehicle must be more than the speed of 60mph as alleged by the appellant and the speed of 40mph alleged by the respondent;

(2) Based on the rough plan of the accident scene i.e. the road is a straight road and the motor van is a big size vehicle, it was impossible for the second respondent who was moving to suddenly hit the motor van unless the motor van had abruptly stop moving; and

(3) The fact that the second respondent have no valid driving license and that she was charged in court, it does not mean that she was negligent. The respondents had referred to the case of *Chu Kim Sing & Anor v Abdul Razak Bin Amin* [1999] 6 MLJ 422.

(4) The Binghams Motor Claim Chart referred to by the appellant during trial cannot be used in this claim because the chart is not applicable in case of sudden brake and also because the appellant had denied of doing such act.

[18] Based on the above, the respondents thus submitted that the liability of causing the accident is indeed 100% upon the appellant.

[19] With regard to the quantum, based on two medical reports by the Doctors from Hospital Ampuan Hafzan, Kuantan (refer exhs PI and P2 at pp 180 and 181 of the appeal record) that stated:

(1) The second respondent was admitted to the hospital on the date of the accident and one emergency operation was performed on 18 October 1998;

(2) 'Primary ileac anastomosis' and 'Hartman's procedure' was performed for the injury of 'sigmoid colon perforation' of the second respondent;

(3) After the surgery, the second respondent was ventilated in the ICU and was given an intensive supportive therapy;

(4) The second respondent had went through a stormy recovery process and after 37 days of treatment, the second respondent was finally recovered;

(5) The second respondent had underwent another operation on 7 January 1999 for adhesiolysis and reversal of Hartman's procedure to achieve bowel continuity'; and

(6) And for the second respondent's orthopaedic problem, a debridgement and closed manual reduction was performed.

[20] Case law cited by learned counsel for the respondent in support of the damages claimed are:

(1) *Mahalingam a/I Vara than v Chan Chee Tuck* [1987] 2 MLJ 20 (p 108 of the appeal record);

(2) *Phuah Jee Suan v Nila Vasupillai* [1973] 1 MLJ 186 (p 147 of the appeal record).

[21] The respondents submitted that the amount of RM60,000 for the Ileum Perforation & Sigmold-colon Perforation (Intra-abdominal injury) by the trial judge is adequate and should not be reduced.

THE JUDGMENT

[22] Upon assessing the appeal record and the submission filed by both parties, the court makes the following findings:

Liability

[23] Both parties gave and maintained conflicting versions on how the accident occurred.

[24] The Federal Court in the case of *Chai Kah Sim v Ishak bin Saad* [1986] 2 MLJ 132 have clearly pointed out that in case of contradictory evidence, the court must look at other available evidence in order to assist him in making his finding (at pp 132–133):

> The parties gave conflicting versions of the manner in which the accident occurred as noted by the trial judge. According to the respondent, he was riding his motorcycle about two feet from the left edge of the road and while negotiating the bend he collided against the rear offside wheel of the oncoming lorry. After that, he could not remember anything else. On the other hand, the appellant testified when approaching the bend he saw the respondent coming straight at his lorry. He tried to swerve to the left to avoid a collision but the respondent's motorcycle collided against the front of the rear offside tyre of the lorry. In the light of the contradictory versions, the learned Judge took into consideration the other available evidence, viz, the sketch plan and photographs of the scene showing the positions of the two vehicles after the accident and the police reports lodged by both parties to assist him in making his finding. In our view, he has applied the correct test.

[25] In the present case, in the police report made by both parties (exhs P3 and P6), the respondents had alleged that the appellant had abruptly braked and that this had caused the accident, meanwhile the appellant had denied that he had braked abruptly and alleged that he was only driving along when without reason known to him, the second respondent's motorcycle hit his motor van from behind. And during their testimony, they maintained their version of story.

[26] The independent evidence given by the Investigating Officer, Sarjan Shamsuddin bin Ali who testified during trial were:

(1) based on the rough plan, both vehicles come from the same direction and are heading towards the same direction;

(2) there are no brake marks from any vehicles at the accident scene; and

(3) the rider of the motorcycle (the second respondent) does not have a valid driving licence and was charged in court for negligence driving whereby she pleaded guilty and was fined RM150.

[27] Analyzing the police report and the independent evidence by Sarjan Shamsuddin and comparing it with the testimony of the second respondent and the appellant in court, this court finds that the police report (D6) by the appellant is more consistent with his story in court. This is so because D6 was made on the day of accident itself whereas the second respondent's police report (D3) was made about two months after the accident.

[28] Other than that, it has also been proven that there were no brake marks on the road of the accident scene to support the story of sudden braking by the appellant as alleged by the respondents. Furthermore, looking from the surrounding of the accident scene from the rough plan i.e. the road is of a straight lane and the fact that both vehicles come from the same direction and head to the same direction, there is no possible reason for the appellant to brake suddenly to stop his motor van.

[29] It can also be seen from the independent evidence adduced that the second respondent is not a competent driver to ride the said motorcycle as she does not have a valid driving licence. Although, not having a valid driving licence in itself does not mean that the a driver is negligent, nevertheless, in this case, the second respondent herself, on her own accord had admitted guilt for negligence driving when she pleaded guilty when charged in court under rule 10 for the said offence.

[30] In this regard, this court allowed the appeal against the 100% liability of the appellant and held that the second respondent had significantly contributed to the occurrence of the accident, whereby it is apportioned that she is 80% liable for the accident, as submitted by learned Counsel for the appellant (see p 169 of the appeal record).

Quantum

[31] As submitted and duly proven by the respondents, as the result of the accident, the second respondent had suffered the following injuries:

(1) Intra-abdominal injury (Ileum perforation and sigmoid-colon perforation); and

(2) Compound Grade I Fracture of Right Radius and Right Ulna

[32] She was admitted twice to the hospital and had to undergo two surgical procedures. She also had to go through a tedious recovery process whereby she was ventilated in the ICU and was given an intensive supportive therapy. It can be clearly seen from here that she was severely injured and these injuries had caused her much pain and suffering.

[33] In the case of *Liau Mui Mui v Dr R Venkat Krishnan* [1999] 1 CLJ 207:

The initial injuries suffered by the plaintiff are:

(a) 1 cm tear in the fundus of the uterus over the left side.

(b) Multiple perforations four in number in the rectum each about 1 cm in diameter.

(c) Multiple lacerations three in the terminal ileum each tear measuring 2cm x 3 cm going through entire wall of ileum.

(d) The length of the small bowel involved was about 10 inches and there was one foot shortening of the small intestines.

(e) Minimal bleeding from the anterior aspect of uterus.

(f) Fair amount of faecal contamination in the peritoneum and fibrinous matter over the small bowel.

(g) The ileum and the mesentery was oedematous and thickened. The operation done on the plaintiff on 19 April 1980 included:

(h) Gut resection of ileum and to end anastomosis.

(i) Rectal perforations repaired.

(j) Transverse colostomy (loop colostomy) done.

(k) Drain inserted into recto uterine pouch.

(l) The uterine perforation was repaired.

The plaintiff underwent a second operation for closure of colostomy on 17 June 1980 and was discharged on 21 June 1980. After the two initial operations on the plaintiff, the plaintiff was readmitted twice in the General Hospital. The first read mission was on 22 November 1980 wherein he was hospitalised for seven days and diagnosed to have acute intestinal obstruction due to adhesions. The second re-admission was on 13 May 1980 wherein she was hospitalised for ten days and a diagnosis of adhesion colic was made. The initial injuries to the plaintiff has also resulted in three scars, namely a colostomy scar, a subumbilical laparatomy scar and a small scar in the left illiac fossa represented by the previous drain site wound. Apart from the hospitalisation she was seen by SP2 as an outpatient. Sometimes, the plaintiff came with abdominal pain, sometimes with complaints of diarrhoea, mostly related to abdominal pain with feeling of bloated stomach and passing of loose stools. The plaintiff kept on going back to see SP2 and sometimes said she felt like vomiting. For the first ten years the plaintiff went back to see SP2 quite frequently. SP2 stated that adhesions can recur at any time even 20 years after the operation. This is supported by exh P20 at D on p 148 which states that adhesions may present as obstruction 30 or more years after abdominal surgery. The plaintiff had complained of various symptoms of adhesion colic such as bloated stomach, feeling like vomiting and diarrhoea. The plaintiff stated that for the first ten years the symptoms were very severe and she is still not normal, after the operation she lost 10 lbs in weight, felt weak and could not do heavy work, after the operation she felt sad and pain all over her body, she could not leave the house because of the colostomy bag and could not wear fashionable clothes, and she also had problems with her sex life.

In *Puspawangi bte Hassan v Chou Hau* [1993] Mallal's Digest para 734a sum of RM44,000 was awarded in 1992 for intra abdominal injury. In the case of *Mahalingam a/I Varathan v Chan Chee Tuck* [1987] 2 MLJ 20 a sum of RM30,000 was awarded on 29 December 1986 for intra abdominal injury.

On the evidence, to my mind, an award of RM40,000 under this head is adequate.(Emphasis added.)

[34] And in the case of *Phuah Jee Suan v Nila Vasu Pillai* [1973] 1 MLJ 186:

The other matter which requires consideration is the question of changes in the value of money which has been often termed as the decrease in the purchasing power of the dollar or the increase in the cost of living over the years. Leaving authority aside, both principle and common sense require that the courts, when they assess an award of money, which is to compensate a plaintiff for the damage caused to him by his injuries, should take into account large and comparatively permanent changes in the real value, ie in the purchasing power, of money. If one tries to assess an award for personal injuries today, and looks for guidance to an award made twenty years ago in a comparable case, the decline in the real value of money must be taken into account. The matter does not rest only on common sense and principle. There is considerable authority for this proposition. In *Wharton v Sweeney* 105 SJ 887, Ormerod LJ referred to the question in these words:

It is well that there should be some consistency, and the amount awarded in the past are a useful and general guide, bearing in mind the variation of circumstances and bearing in mind too and this is important - the changes in the value of money over the years.

And in *Aiken v Port of London Authority* [1963] 1 LI Rep 44, Willmer LJ said:

Our attention was drawn to other cases where this court has had to deal with similar injuries sustained. They were mostly cases decided some ten or twelve years ago... As was pointed out by Mr. Marven Everett, some allowance has to be made for the fall in the value of money since these cases were decided. He might, I think, have gone on to observe that in any damages awarded now allowance should be made for the possibility that the value of money may continue to fall in the future.

In *Sands v Devan* [1945] SC 380, Lord Normand said:

Since we must perforce measure the damage in money, we must, I think, take account of large and relatively permanent variations in the value of money. 'And Lord Moncriff added, 'As regards what falls to be paid in money the court must take note of changes in the value of money.

A It would be extremely difficult, if not, impossible, for a judge to assess proper damages without some guidance from past cases and the principle of having regard to awards in comparable cases have been approved by the House of Lords in *H West & Son, Ltd v Shephard* [1964] AC 326, and also by the Privy Council in *Jag Singh v Toong Fong Omnibus Co Ltd* [1964] MLJ 463. It is therefore
B *imperative that where an old comparable case is considered, there should be an adjustment for the change in the value of money which should be reflected in the award*. The difficulty always is in ascertaining the change or the comparative value of money at two different dates several years apart. In this connection it is futile to refer to the fall in the purchasing power of the English pound. As was pointed out by the Judicial Committee in *Jag Singh v Toong Fong Omnibus Co*
C *Ltd,* comparisons should be made with cases 'in the same jurisdiction or in a neighbouring locality where similar social, economic and industrial conditions exist.' The economic conditions in England and Singapore are vastly different. Unlike England, there is no inflation in Singapore or for that matter in Malaysia. Furthermore, wages in England of the working class have been consistently on
D the rise whereas in Singapore there has been no general revision of salaries for a very long time. A government committee appointed last year to consider the matter recommended an increase of wages of only eight per cent (Emphasize added).

E **[35]** This court therefore held that the quantum of RM60,000 as awarded by the trial judge is adequate and in the circumstances is not excessive as per the injuries suffered. The quantum is based on 100% liability.

[36] The appeal as regards to quantum is therefore dismissed.
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[37] In the circumstance, there is no order as to costs, however the appeal deposit is hereby returned to the appellant.

Appeal allowed in part.
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Reported by Brendan Navin Siva

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